State of California

SECRETARY OF STATE

APPROVAL OF USE OF
DIEBOLD ELECTION SYSTEMS, INC.
DRE & OPTICAL SCAN VOTING SYSTEM

I, BRUCE McPHERSON, Secretary of State of the State of California, do hereby certify that:

1. *Diebold Election Systems, Inc.* of McKinney, Texas ("Vendor"), has requested approval for use in California elections of its GEMS software, version 1.18.24, AccuVote-TSX with AccuView Printer Module and Ballot Station firmware version 4.6.4, AccuVote-OS (Model D) with firmware version 1.96.6, AccuVote-OS Central Count with firmware version 2.0.12, AccuFeed, Vote Card Encoder, version 1.3.2, Key Card Tool software, version 4.6.1, and VC Programmer software, version 4.6.1, submitted on or about September 16, 2005.

2. The voting system described above has been federally qualified as evidenced by the federal Independent Testing Authority reports and the assigned NASED Number # N-1-06-22-22-002, dated October 3, 2005.

3. The request for approval of the voting system as described in Paragraph 1, was considered at a duly noticed public hearing held November 21, 2005, at Sacramento, California.

4. Diebold Election Systems, Inc.'s GEMS software, version 1.18.24, AccuVote-TSX with AccuView Printer Module and Ballot Station firmware version 4.6.4, AccuVote-OS (Model D) with firmware version 1.96.6, AccuVote-OS Central Count with firmware version 2.0.12, AccuFeed, Vote Card Encoder, version 1.3.2, Key Card Tool software, version 4.6.1, and VC Programmer software, version 4.6.1, are hereby approved for use subject to the following terms and conditions:

a. No additional software developed by the Vendor other than that specifically listed in this certificate shall be installed on a computer running GEMS version 1.18.24.

b. No substitution or modification of the voting systems shall be made with respect to any component of the voting systems, including the Procedures, until the Secretary of State has been notified in writing and has determined that the proposed change or modification does not impair the accuracy and efficiency of the voting systems sufficient to require a re-examination and approval;

c. The Secretary of State reserves the right, with reasonable notice to Vendor and to the counties using any of the voting systems, to modify the Procedures used with any of the voting systems and to impose additional requirements with respect to the use of any of the systems if the Secretary of State determines that such modifications or additions are necessary to enhance the accuracy, reliability or security of any of the voting systems. Such modifications or additions shall be deemed to be incorporated herein as if set forth in full;

d. Any county using any voting system shall, prior to such use, file with the California Secretary of State a copy of its Election Observer Panel plan;

e. The vendor agrees in writing to provide, and shall provide, to the Secretary of State, or to the Secretary of State's designee, within 30 (thirty) days of the Secretary of State's demand for such, a working version of the voting system, including all hardware, firmware and software of the voting system, as well as the source code for any software or firmware contained in the voting system, including any commercial off the shelf software or firmware that is available and disclosable by the vendor, provided that the Secretary of State first commits to the vendor in writing to maintain the confidentiality of the contents of such voting system or source code so as to protect the proprietary interests of the vendor in such voting system or source code. The terms of the commitment to maintain confidentiality shall be determined solely by the Secretary of State, after consultation with the vendor. The voting system shall not be installed in any California jurisdiction until the vendor has signed such an agreement. Any reasonable costs associated with the review of the source code for any software or

firmware contained in the voting system shall be born by the vendor;

f. A final version of use procedures must be submitted to and approved by the Secretary of State prior to sale or use of the system in California. These procedures must include the following additional security measures:

- The elections official must reset the encryption key used for all AV-TSX units to change the key from the factory default setting prior to programming any units.

- Each memory card shall have a permanent serial number assigned to it.

- Each memory card must be programmed in a secured facility under the supervision of the registrar of voters/registrar of voters' staff. Once a memory card is programmed for the election, it must be immediately inserted into its assigned unit and sealed with a serialized, tamper-evident seal by the registrar of voters or the registrar's staff, and have its serial number logged into a tracking sheet designed for that purpose.

- The county must maintain a written log that records which memory cards and which serialized tamper-evident seals are assigned to which units. Any breach of control over a memory card shall require that its contents be zeroed, in the presence of two election officials, before it can be used again

- On Election Day, prior to any ballots being cast on any unit, the integrity of the tamper-evident seal must be verified by the precinct officer before opening the compartment containing the memory card and unit power switch. The serial number of the seal must also be verified against the log provided the Precinct Inspector. This procedure must be witnessed by at least one other precinct officer or staff of the registrar of voters.

- If it is detected that the seal has been broken prior to the unlocking of the compartment, or if there is a discrepancy between the log and the serial number, the discrepancy must be confirmed by one or more of the remaining members of the precinct board, documented, and immediately reported to the county elections official for the jurisdiction. The elections official shall immediately investigate and

determine appropriate action. If this potential breach occurs in a unit, the specific unit must undergo a full manual reconciliation of the electronic votes cast and captured on the memory card against the paper audit record for that unit.

- The county must maintain a written log that accurately records the chain of custody of each memory card and unit from the point of programming the memory card for use in the election through the time of completion of the official canvass.
- Access to the GEMS server shall be tightly controlled and all persons having access to it at any time shall be pre-approved by the county elections official and noted in a log that details name, time, and purpose of access to the room in which the GEMS is housed.
- If being used to meet the accessibility provisions of federal or state law, or if for any reason only one such unit is being used at the precinct, once one vote is cast on a TSX unit, the poll workers shall ensure that at least two more ballots are cast on the machine, even if not by a voter needing its accessibility components, in order to protect the privacy of the voter.
- Any issues that arise relating to voting equipment shall be reported to the Secretary of State's Office of Voting Systems Technology Assessment on Election Day, including a complete description of the problem and how it has been resolved. The Secretary of State will provide a telephone number for this purpose.
- Prior to certification of the official canvass of returns by the county, the county will provide a written report to the Secretary of State addressing any issues related to the implementation and operation of the voting system. The county will make available for inspection by staff of the Office of the Secretary of State the chain of custody logs and/or documents relating to the system's use in that election.

g. The above additional security measures are conditions for use in the State of California.

h. The county elections official must submit to the Secretary of State a plan for voter and poll worker education no later than 30 days prior to the election in which the system will be used. Training shall be conducted for all personnel, including poll workers, regarding proper treatment of memory cards and how to check for problems with seals,

as well as how to record any problems discovered and what to do if such problems arise.

i. The Secretary of State reserves the right to monitor activities before, during and after the election at any precinct or registrar of voters' office, and may, at his or her discretion, conduct a random parallel monitoring test of voting equipment.

j. Pursuant to this certification and by order of the Secretary of State, voting systems certified for use in California shall comply with all applicable state and federal statutes, regulations, rules and requirements, including, but not limited to, those voting system requirements set forth in the California Elections Code and the Help America Vote Act of 2002, and those requirements incorporated by reference in the Help America Vote Act of 2002, that are in effect as of the date of this (application, agreement, contract, etc). Further, voting systems shall also comply with all applicable state and federal voting system guidelines, standards, regulations and requirements that derive authority from or are promulgated pursuant to and in furtherance of the California Elections Code or the Help America Vote Act of 2002 or other applicable state or federal law when appropriate, that are in effect as of the date of this (application, agreement, contract, etc), including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005. This does not include future final court interpretations of existing state or federal law not in effect as of the date of this (application, agreement, contract, etc.).

k. Voting system manufacturers and/or their agents shall assume full responsibility for any representation that a voting system complies with all applicable state and federal requirements as referenced above. In the event such representation is determined to be false or misleading, voting system manufacturers or their agents shall be responsible for the cost of any upgrade, retrofit or replacement, of any voting system or its component parts, found to be necessary for certification or to otherwise be in compliance.

I. Any voting system purchased with funds allocated by the Secretary of State's Office shall meet all applicable state and federal standards, regulations and requirements, including, but not limited to, those voting system requirements as set forth in the California Elections Code and the Help America Vote Act of 2002 and those requirements incorporated by reference in the Help America Vote Act of 2002 that are in effect as of the date of this (application, agreement, contract, etc), including but not limited to, the 2002 Voting System Standards/Guidelines, developed by the Federal Election Commission and adopted by the Election Assistance Commission (EAC) and EAC Advisory 2005-004, dated July 20, 2005.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California, this 17th day of February, 2006.

BRUCE McPHERSON
Secretary of State